

JS 44 (Rev 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS COLLEGE ENTRANCE EXAMINATION BOARD (b) County of Residence of First Listed Plaintiff <u>NEW YORK, NY</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Buchanan Ingersoll & Rooney, 700 Alexander Park, Ste 300, Princeton, NJ 08540 (609) 987-6800	DEFENDANTS HONG-IK SON a/k/a JEFFREY SOHN, HENEM IVY ACADEMY, JOHN and JANE DOES, and ABC and XYZ County of Residence of First Listed Defendant <u>BERGEN, NJ</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4										
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Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6										


IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>17 U.S.C. section 101, et seq.</u>
	Brief description of cause: <u>Infringement of copyrighted material.</u>

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE <u>12/21/2007</u>	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG JUDGE _____
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Attorneys for Plaintiff,
College Entrance Examination Board

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COLLEGE ENTRANCE EXAMINATION
BOARD,

Plaintiff,

v.

HONG-IK SON, a/k/a JEFFERY SOHN,
HENEM IVY ACADEMY, JOHN AND
JANE DOES, and ABC AND XYZ
CORPORATIONS,

Defendants.

CIVIL ACTION

Case No. _____

Electronically Filed

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND DEMAND FOR
JURY TRIAL**

Plaintiff College Entrance Examination Board (the "College Board"), by its undersigned attorneys, for its Complaint states as follows:

PRELIMINARY STATEMENT

1. The College Board sponsors several high-stakes standardized tests used by colleges and universities throughout the United States. One such test is the SAT[®] Reasoning Test ("SAT"), which is taken by several million high school students each year and used by thousands of colleges and universities as part of the admissions process.

2. The College Board offers the SAT several times each year. After certain designated SAT administrations, the College Board makes available to test takers, for a fee, a

copy of the operational sections of the test forms used at those administrations, along with the correct answers to the questions in those sections.

3. SAT test forms used at other test administrations are not disclosed either to test takers or the public so that they may be used again in future administrations. All of the test forms published by the College Board—whether disclosed or nondisclosed—are registered with the United States Copyright Office.

4. In addition to copyrighted test forms, the College Board publishes study guides for the SAT. These works are likewise registered with the Copyright Office.

5. Defendants have deliberately infringed the College Board's copyrights in many of its nondisclosed and disclosed test questions, test forms, and other materials. Accordingly, the College Board seeks injunctive relief, and the full range of monetary remedies provided by the Copyright Act, against both Defendants.

THE PARTIES

6. Plaintiff College Board is a New York non-profit membership association with its principal place of business at 45 Columbus Avenue, New York City, New York 10023.

7. On information and belief, Defendant Hong-Ik Son, a/k/a Jeffrey Sohn or Jeffrey Son ("Sohn") resides at 100 Old Palisades Road # 3612, Fort Lee, NJ 07024.

8. On information and belief, Defendant Henem Ivy Academy ("Henem") is a for-profit testing academy with its principal place of business in Seoul, Korea, which does business in New Jersey.

JURISDICTION AND VENUE

9. This is an action for copyright infringement, arising under 17 U.S.C. § 101, et seq. (hereinafter the “Copyright Act”).

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

11. This Court has personal jurisdiction over Defendant Sohn because he resides in the State of New Jersey and committed substantial copyright infringements in this State.

12. This Court has personal jurisdiction over Defendant Henem because it has carried out substantial business in New Jersey, including distribution of infringing copies of copyrighted College Board materials.

13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(a), because a substantial part of the events giving rise to the College Board’s claims occurred in this judicial district, and because this Court has personal jurisdiction over Defendants Sohn and Henem.

FACTS

The College Board and the SAT Program

14. The College Board is a not-for-profit membership association whose mission is to connect students to college success and opportunity. Founded in 1900, the College Board is composed of more than 4,500 schools, colleges, universities, and other educational organizations. In fiscal 2007-07, the College Board served more than 7 million students and their parents; 23,000 high schools; and 3,500 colleges through major programs and services in college admissions, guidance, assessment, financial aid, enrollment, and teaching and learning. The SAT is among its best known programs.

15. The College Board owns the copyright in SAT questions and forms. SAT questions are painstakingly developed through a complex process entailing significant creative effort and multiple rounds of revision, review, and pretesting. In addition, each test form—including each of the SAT forms unlawfully copied and distributed by Defendants—is the product of a lengthy and complex set of judgments about how to assemble an entire form out of many individual test questions.

16. The College Board devotes substantial resources to protecting the integrity of the testing process so that no SAT test taker has an unfair advantage over other test takers. One way in which the College Board does this is by taking substantial steps to safeguard the confidentiality of nondisclosed SAT test questions and test forms. For obvious reasons, it is unfair to other test takers if some candidates can review and study the actual test form or test questions in advance of a test administration. Such “pre-knowledge” gives candidates an unfair advantage even if the candidates are not aware (until they sit for the actual test) that they have been studying from the “live” test questions or test form.

17. Reuse of nondisclosed test forms and test questions is a standard and necessary practice in the testing industry. One reason (among many) that the College Board reuses SAT test forms and test questions is that doing so enables it to administer the SAT to small groups of students, including students with disabilities and students who for religious reasons cannot test on Saturday. The College Board schedules the use and reuse of SAT test forms so as to minimize the possibility that any test taker will see the same test form more than once.

The Business of Jeffery Sohn and Henem Ivy Academy

18. Defendant Sohn offers group classes to help students prepare for certain examinations, including the SAT. He has been involved in the test preparation industry for

several years, and has been affiliated with at least three different test preparation academies (ESC, Delta Prep Academy, and Henem). As a long-time test preparation provider, Sohn knows which SAT administrations are disclosed and which are not, and he is fully familiar with the difference between disclosed and nondisclosed SAT test forms and test questions.

19. Defendant Henem offers test preparation services and either works with or employs Defendant Sohn.

20. Defendants Sohn and Henem held a multi-day test preparation course between Saturday, November 17, 2007, and Sunday, November 25, 2007 at the Courtyard by Marriott Hotel in Montvale, New Jersey. Defendants and their associates (on information and belief, other instructors named Jin-Young Bae, Jonh-Wu Kim, and Michael Joo) charged as much as \$5,500 per customer for this nine-day “intensive” test preparation “academy.” As part of this fee, enrolled customers received materials from Defendants that, on information and belief, included copies of numerous copyrighted College Board materials.

Defendants’ Illegal Conduct

21. Defendants Sohn and Henem unlawfully obtained and distributed copies of SAT test forms and/or questions that, at the time Defendants obtained them, had not been disclosed to the public. These forms are protected by valid copyrights owned by the College Board.

22. One such SAT form was used at the College Board’s November 2007 national SAT administration (“the November 2007 SAT form”). Mr. Sohn himself sat for the November 2007 SAT, and, on information and belief, photocopied some or all of the test form that was administered that day. Defendants have also infringed the nondisclosed SAT test forms first used in November 2005 and in June 2007.

23. After unlawfully obtaining copies of these nondisclosed test forms, Defendants or one of their associates made further copies of the forms and, on information and belief, distributed them to their customers.

24. Defendants have also copied and distributed other copyrighted College Board materials—including disclosed test forms and other test preparation publications—to create the materials used in their classes and tutoring sessions.

25. Each SAT test question and test form is a wholly original work of authorship fixed in a tangible medium of expression. Pursuant to the Copyright Office regulations governing registration of secure tests, 37 C.F.R. § 202.20(b)(4), (c)(2)(vi), the College Board has registered or is in the process of registering with the Copyright Office the following SAT forms that have been infringed by Sohn, Henem, or both:

Form Number	Date of First Publication	Copyright Office Registration Number(s) (Individual sections of certain SAT test forms may be covered under separate Copyright Registrations. Thus, a complete SAT test form may have more than one TX Form.)
4BSA01	03/12/2005	TX 6-128-005 TX 6-128-004
4BSA02	05/07/2005	TX 6-212-606
4BSA03	05/07/2005	TX 6-212-606
4BSA08	10/08/2005	TX 6-296-023; TX 6-296-024
4BSA09	11/05/2005	TX 6-296-021; TX 6-296-022
4BSA10	12/3/2005 1/27/2007	TX 6-350-990; TX 6-350-988 TX 6-540-404; TX 6-540-405
4CSA02	05/06/2006 05/07/2006	TX 6-397-502; TX 6-397-507 TX 6-397-506
4DSA02	05/05/2007	Registration pending

4DSA03	06/02/2007	Registration pending
4DSA05	11/03/2007	Registration pending

26. At no time did the College Board give permission or authorization to either of the Defendants to copy, reproduce, publish, distribute copies of, or prepare derivative works from any SAT forms or questions or to affix their name to these works, including the nondisclosed forms that Defendants unlawfully copied and distributed. In fact, each page of the SAT contains a warning explicitly prohibiting copying.

Jeffery Sohn's Involvement with <http://café.daum.net/newsat>

27. Although he is well past college age, Defendant Sohn has sat for the SAT at least 11 times, most recently in November 2007.

28. In January and November 2007 (specifically, January 27 and November 3), Defendant Sohn took the SAT and sent e-mails containing verbatim excerpts to members of his internet mailing list. Sohn promised to provide the same "service" with respect to the December 1, 2007 SAT administration, and he registered to take the SAT at Graphic Communication Arts High School in New York City. The November form that Sohn copied is nondisclosed.

29. In his January 2007 email, Sohn claimed that he knew the answers three hours before he sat for the SAT. On information and belief, Defendants are engaging in a scheme that takes advantage of the fact that the SAT is administered at different times in different time zones.

COUNT I

**Copyright Infringement
17 U.S.C. § 101, *et seq.***

30. The allegations of paragraphs 1-29 are incorporated as if fully set forth herein.

31. The College Board is the sole and exclusive owner of copyright in the SAT forms and questions listed above.

32. Defendants have infringed and continue to infringe the College Board's copyright in these works, by copying, distributing, publicly displaying, preparing derivative works from, and/or otherwise violating the College Board's exclusive rights in the works.

33. Defendants' unlawful actions have negatively impacted the public interest and are capable of repetition.

34. Defendants' infringements have been reckless, willful, and intentional.

35. Defendants have caused and continue to cause irreparable harm to the College Board by their infringement of the College Board's copyrighted works.

36. The College Board is entitled to a temporary restraining order and preliminary and permanent injunction, as specifically provided for in 17 U.S.C. § 502, restraining Defendants and all persons acting in concert with them, from engaging in further acts of infringement.

37. The College Board is further entitled to recover from Defendants statutory damages for their infringement. In the alternative, the College Board is entitled to recover from Defendants its actual damages and/or Defendants' unlawful profits.

38. The College Board is also entitled to recover from Defendants the attorneys' fees it has sustained and will sustain.

PRAYER FOR RELIEF

WHEREFORE, THE COLLEGE BOARD PRAYS that the Court:

(A) enter a temporary restraining order and grant a preliminary and permanent injunction enjoining Defendants and anyone acting in concert with Defendants from copying or

distributing any unauthorized copy of any of the College Board's tests, test questions, or other copyrighted publications;

(B) require Defendants and anyone acting in concert with Defendants to return to the College Board any unauthorized copy of any College Board test form or test question or test preparation material, or any copy that was distributed to Defendants without authorization by the College Board;

(C) award the College Board its actual or statutory damages, attorneys' fees, and costs under the Copyright Act; and

(D) grant the College Board such other relief as may be just and proper.

Respectfully submitted,

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Dated: December 21, 2007

By: s/ Mary Sue Henifin
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JURY TRIAL DEMANDED

The College Board demands a jury trial on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Mary Sue Henifin, Esquire is hereby designated trial counsel in this matter.

LOC. CIV. R. 11.2 CERTIFICATION

MARY SUE HENIFIN, an attorney-at-law of the State of New Jersey, hereby certifies to the best of her knowledge and belief:

1. The matter in controversy in this action is not the subject of any other action pending or contemplated in any court or in any arbitration proceeding.
2. I presently know of no other party who should be joined in the action.

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Dated: December 21, 2007

By: s/ Mary Sue Henifin
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